IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5424 OF 2004

IN

CRIMINAL REVISION APPLICATION NO.460 OF 2004

The State of Maharashtra ...Applicant

Versus

Madhur Ramchandra Bhandarkar ...Respondent

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Mr.N.B.Pawaskar, Spl.P.P. for Applicant.

Mr.Shrikant Shivade with Ms.Rajashree Gadkari for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 17, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Application is for condonation of delay in filing the Criminal Revision Application against order dated 30th July 2004 passed by the lower Court in Anticipatory Bail Application No.864

of 2004. The delay is of 31 days. As stated earlier, the order was passed by the lower Court on 30th July 2004. According to the Applicant certified copy thereof was applied on 4th August 2004 and delivered on the same day. It appears that the A.P.P. who had appeared in the case, advised that no fruitful purpose would be served by filing Revision Application. However, the Chief Public Prosecutor had taken a contrary view and recommended filing of Revision Application. That was done on 17th September 2004, which proposal was received in the Law and Judiciary Department on 21st September 2004. It is stated that the said proposal was processed and eventually, sanction was granted on 20th October 2004, after seeking the reply from the concerned Public Prosecutor. After sanction was accorded, papers were forwarded to the Office of the Public Prosecutor on 29th October 2004 and later on, appointment of Special Public Prosecutor was made on 2nd November 2004. In the meantime, however, time to file Revision Application expired on 30th November 2004. It is seen that on 4th November 2004, the papers were entrusted to the Special Public Prosecutor

appointed on 2nd November 2004, who in turn, has stated to have drafted the Application on 22nd November 2004 and filed the same in this Court on 30th November 2004. As is seen from the record, the delay is essentially on account of the procedural lapses in the Law and Judiciary Department or the Office of the Public Prosecutor.

3. Viewed in this perspective, in the interest of justice, the delay of 31 days needs to be condoned. Accordingly, this Application should succeed.

4. However, the Applicant has raised an issue in the rejoinder affidavit, pointing out that the Respondent, on the one hand, makes grievance that copy of the delay application as well as the affidavit filed on behalf of the State has not been served, but in the reply affidavit as filed, has clearly asserted that he has perused the application for condonation of delay. This aspect has been explained in the further affidavit filed by the Respondent, sworn on 17th January 2005. The statement made in Para 3 of the said affidavit is

not put in issue by the Applicant. There is no reason to doubt the correctness of the said assertion, as that fact has not been contradicted by the Applicant. Accordingly, it is not necessary to get embroiled with the grievance made by the Applicant as referred to above. Suffice it to observe that delay in filing Revision Application is condoned is terms of prayer clause (a).

5. Criminal Revision Application be posted on 20th January 2005 for hearing, as is agreed by the Counsel, to be included in the supplementary list.

A.M.KHANWILKAR, J.